

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/932,834	09/18/97	PORUBEK	D 077319/0129

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HM12/0224

EXAMINER	
BERCH, M	
ART UNIT	PAPER NUMBER

1611

41

DATE MAILED:

02/24/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Defective Notice of Appeal or Brief**Application No.  
08/932,834

Applicant(s)

Porubek

Examiner

Mark L. Berch

Group Art Unit  
1611 The Notice of Appeal filed on \_\_\_\_\_ is: not acceptable because:

- it was not timely filed.
- the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).
- the appeal fee received on \_\_\_\_\_ was not timely filed.
- the submitted fee of \$ \_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$ \_\_\_\_\_.
- the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.
- a Notice of Allowability, form PTO-37, was mailed by the Office on \_\_\_\_\_.

 The appeal brief filed on Oct 1, 1999 is NOT acceptable for the reason(s) indicated below:

- The brief and/or brief fee is untimely. See 37 CFR 1.192.
- The statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).
- The submitted brief fee of \$ \_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$ \_\_\_\_\_.

*SEE MEMO*  
The appeal in this application will be dismissed unless corrective action is taken. Extensions of time may be obtained under 37 CFR 1.136(a).

 The appeal in this application is DISMISSED because:

- The fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.
- The brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.

 Because of the dismissal of the appeal, this application:

- is abandoned because there are no allowed claims.
- is being returned to the examiner for final disposition because it contains allowed claims. Prosecution on the merits is CLOSED.

MARK L. BERCH  
PRIMARY EXAMINER  
ART UNIT 1611

Art Unit: 1611

NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37  
CFR 1.192(c)

1. The Appeal Brief is based on the wrong set of claims. It assumes that the paper of 10/1/99 will be entered but it was not. The claims are only those that existed as of entry of the 7/14/99 paper.
2. The brief does not contain, for the rejections under 35 U.S.C. 112, (second paragraph), an argument which specifies the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which applicant regards as the invention. The 35 USC 112, paragraph 2 rejection has not been addressed.

Appellant is required to comply with provisions of 37 CFR 1.192(c).

To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 1.192(c) within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Mark L. Berch whose telephone number is 703-308-4718.

Mark L. Berch

Primary Examiner



Group 1610 - Art Unit 1611

February 24, 2000